

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Roger Phillip Lindquist
SSN XXX-XX-0973
Anne Marie Lindquist
SSN XXX-XX-4852

CASE NO. 03-41474 RJK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 4, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel in Courtroom 8 West of the above entitled Court located at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than November 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 26, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on February 28, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$65,000.00, as evidenced by that certain Promissory Note dated March 10, 1998, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated March 10, 1998, executed by Roger Phillip Lindquist and Anne M. Lindquist, husband and wife, as joint tenants, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Hennepin County, Minnesota and is legally described as follows to-wit:

Lot 2, Block 2, Shari Ann Addition.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of October 13, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through October, 2004, inclusive, in the amount of \$781.95 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 13th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

FIXED RATE NOTE

MARCH 10, 1998

ORANGE

California

4309 SHARI ANN LANE NORTH

BROOKLYN PARK

City State MINNESOTA 55443

Property Address

City

State

Zip Code

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S.\$ 65,000.00 (this amount will be called "principal"), plus interest, to the order of the Lender. The Lender is METROPOLITAN FINANCIAL, INC., A NEVADA CORPORATION

Date Funded 3-26-98

The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid.

I will pay interest at a yearly rate of 13.990 %

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the 13th day of each month beginning on APRIL 13, 1998. I will make these payments every month until I have paid all of the principal and interest and any other charges described below, that I may owe under this Note. My monthly payments will be applied to interest before principal. If on MARCH 13, 2023, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date."

I will make my monthly payments at 1820 W. ORANGEWOOD AVE, SUITE 211, ORANGE, CA 92668

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S.\$ 781.95

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any of my monthly payments by the end of 10 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5 % of my overdue payment, but not less than U.S.\$ N/A and not more than U.S.\$ N/A. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver by Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note (including the promise to pay the full amount owed). Any person who is a guarantor, surety, or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Deed of Trust, dated the same day as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Deed of Trust describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note. Some of these conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Lender if prohibited by federal law as of the date of this Deed of Trust.

If Lender exercised this option, Lender shall give Borrower notice of acceleration. The notice shall be given by first class mail to the Borrower 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums due to pay these sums prior to the expiration of this period, Lender may invoke any remedies notice or demand on Borrower.



165068 1000147754 4000172140 Note

Roger Philip Lindquist
ROGER PHILIP LINDQUIST (Seal) Borrower

Anne M. Lindquist
ANNE M. LINDQUIST (Seal) Borrower

EXHIBIT A

RECORDING REQUESTED BY
METROPOLITAN FINANCIAL, INC.
AND WHEN RECORDED MAIL TO

LOAN # 57861

Name **EMPIRE FUNDING CORPORATION**
Street Address **9737 GREAT HILLS TRAIL**
City State Zip **AUSTIN, TX 78759**



165098 1000147754 43417154 4000172140 Mortgage

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MORTGAGE

THIS MORTGAGE is made this **10th** day of **MARCH**, **1998**, between the Mortgagor,
ROGER PHILLIP LINDQUIST AND ANNE M. LINDQUIST, HUSBAND AND WIFE, AS JOINT
TENANTS

METROPOLITAN FINANCIAL, INC.

(herein "Borrower"), and the Mortgagee,

existing under the laws of **THE STATE OF NEVADA** whose address is **1820 W. ORANGEWOOD AVE, SUITE 211, ORANGE, CA 92668**, a corporation organized and
(herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ **65,000.00**, which
indebtedness is evidenced by Borrower's note dated **MARCH 10, 1998** and extensions and renewal
thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner
paid, due and payable on **MARCH 13, 2023**;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other
sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the
covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and conveys to Lender the following
described property located in the County of **HENNEPIN**, State of Minnesota:

LOT 2, BLOCK 2, SHARI ANN ADDITION.

4309 SHARI ANN LANE NORTH

BROOKLYN PARK

55443

which has the address of

(Street)

, Minnesota

(City)

(Zip Code)

("Property Address"):

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and
fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument.
All of the foregoing is referred to in this Security Instrument as the "Property".

MINNESOTA SECOND MORTGAGE 1/80-PNMA/FHLMC UNIFORM INSTRUMENT

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EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Roger Phillip Lindquist
SSN XXX-XX-0973
Anne Marie Lindquist
SSN XXX-XX-4852

CASE NO. 03-41474 RJK

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of October 13, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through October, 2004, in the amount of \$781.95 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

The property is also subject to another mortgage in favor of Wells Fargo Mortgage in excess of \$79,018.06.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the

automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy. S.D.N.Y., 1986).

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 13th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

4000172140

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

CASE NO. 03-41474 RJK

Roger Phillip Lindquist
SSN XXX-XX-0973
Anne Marie Lindquist
SSN XXX-XX-4852

**AFFIDAVIT OF
DANA ALLEN**

Debtor.

Dana Allen, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of Select Portfolio Servicing, Inc.

2. Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated March 10, 1998, executed by Roger Phillip Lindquist and Anne M. Lindquist, husband and wife, as joint tenants. The property is located in Hennepin County, Minnesota and is legally described as follows, to-wit:

Lot 2, Block 2, Shari Ann Addition.

3. That she has reviewed the account records relating to the Lindquist's mortgage loan, account no. 4000172140.

4. That as of October 4, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$61,419.91
Interest through October 4, 2004	2,354.20
Attorney's Fees:	700.00
Late Charges:	36.54
Non-Escrow Advances:	100.01
Other Fees:	30.04
Escrow Balance (-):	(0.06)
Suspense Balance (-):	(18.05)

TOTAL: \$64,622.59

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of July, 2004 through October, 2004 in the amount of 781.95 each.

6. This affidavit is given in support of the motion of Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation for relief from the automatic stay.

SELECT PORTFOLIO SERVICING, INC.

By Monica Martinez
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 04 day of October 2004.

[Signature]
Notary Public



**NOTARY PUBLIC
AMY A. HOGGAN**
3815 So. West Temple
Salt Lake City, Utah 84165
Commission Expires
February 26, 2005
STATE OF UTAH

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Roger Phillip Lindquist
SSN XXX-XX-0973
Anne Marie Lindquist
SSN XXX-XX-4852

CASE NO. 03-41474 RJK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 13, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Dana Allen, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Roger P. Lindquist
Anne M. Lindquist
4309 Shari Ann Lane
Brooklyn Park, MN 55443

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Leslie L. Kimes
7714 Brooklyn Blvd., Suite 102
Brooklyn Center, MN 55443

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 13th day of October, 2004.

/s/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Roger Phillip Lindquist
SSN XXX-XX-0973
Anne Marie Lindquist
SSN XXX-XX-4852

CASE NO. 03-41474 RJK

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on November 4, 2004, at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated March 10, 1998, executed by Roger Phillip Lindquist and Anne M. Lindquist, husband and wife, as joint tenants, covering real estate located in Hennepin County, Minnesota, legally described as follows, to-wit:

Lot 2, Block 2, Shari Ann Addition

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: _____
Judge of Bankruptcy Court